Supreme Court, U.S.
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No. 04-

IN THE
Supreme Court of the United States

ALICIA KELSO,

Petitioner,

v.

UNITED STATES DEPARTMENT OF DEFENSE
INTELLIGENCE AGENCY +50 INCLUSIVE

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. DOES A FEDERAL EMPLOYER HAVE THE RIGHT TO POSE AN ULTIMATUM TO AN EMPLOYEE IN GOOD STANDING, WHO REPORTS A TERRORIST-THREAT-TO-LIFE INCIDENT, TO **EITHER** RETURN TO ONE'S SURVEILLED PRIVATE RESIDENCE WITHOUT FURTHER INVESTIGATION, **OR** COERCE THE CIVILIAN EMPLOYEE INTO RESIDENT MILITARY PSYCHIATRIC EVALUATION REQUIRING VAGINAL AND BREAST EXAMS?

2. IS THE EMPLOYER GUILTY OF CRIME TANTAMOUNT TO FALSE ARREST, DEFAMATION AND UNLAWFUL SEARCH, IF THERE WAS NO PROBABLE CAUSE, OR MEDICAL HISTORY TO JUSTIFY ACTIONS THAT DETAINED PETITIONER FOR 3 WEEKS, REMOVED CUSTODY OF A 6-YEAR-OLD SON, IN A FOREIGN COUNTRY, ACCEPT THAT HER HOME WAS OFFICIALLY SEARCHED BY THE RANKING OFFICER AND REMOVE ACCESS TO PERSONAL PROPERTY FOR 6 MONTHS?

3. BY WHAT AUTHORITY CAN THE EMPLOYER DEMAND MEDICATION AS A PRE-CONDITION FOR CONTINUED EMPLOYMENT, WHEN EMPLOYER'S OWN DOCTORS DID NOT PRESCRIBE ANY MEDICATIONS FOR "POST TRAUMATIC STRESS"?

4. MAY THE EMPLOYER **DEMAND CONTROL OF EMPLOYEE'S BANK ACCOUNT TO PAY BILLS** THAT **PETITIONER DID NOT INCUR** (I.E. A SWISS AMBULANCE INCIDENT 1.5 MONTHS AFTER EMPLOYER FORCED PETITIONER TO RETURN TO THE U.S.)?

5. DOES THE FACT THAT ***EMPLOYER INFLICTED THE ALLEGED DISABILITY ON APRIL 1, 1997*** AFFECT AMERICANS WITH DISABILITIES ACT (ADA) RIGHTS OF **EQUITABLE TOLLING**, AS TITLE VII U.S.C. RECOGNIZES ADVERSARIAL MISCONDUCT IN ALLOWING THE DEADLINE TO PASS BEFORE BEING ADVISED OF RIGHT TO LEGAL COUNSEL, FORCED SEVERENCE FROM FAMILY AND PROPERTY, PLUS MADE TO BELIEVE THAT EMPLOYER HAD THE RIGHT TO DENY INVESTIGATION OF SURVEILLANCE?

6. DOES THE FACT THAT DIA INDUCED BELATED FILING AND THAT PETITIONER REQUESTED PROPER DIA FORMS FROM MS. JOYCE HARRISON (DIA-SVI-4) IN AUGUST 1997, DURING THE STATUTORY PERIOD, BUT RECEIVED THEM IN APRIL 1998 (9 MONTHS TOO LATE) IMPACT JUSTIFICATION FOR EQUITABLE TOLLING?

7. DOES THE RULE THAT "THE UNITED STATES IS SPECIFICALLY EXEMPT FROM THE DEFINITION OF 'EMPLOYER'"UNDER THE ADA. 42 U.S.C. § 12111 (5)(B)(i), CONSIDER THAT PETITIONER EXHAUSTED INTERNAL REMEDIES WITH EMPLOYER'S CIVILIAN PERSONNEL MEDIATION, THAT PETITIONER HAD NO OTHER EMPLOYER, WAS INCAPACITATED BY THE EMPLOYER?

8. IF EMPLOYER INFLICTED A TORT ON PETITIONER, WHO HAD NO DISABILITY PRIOR TO APRIL 1, 1997, BUT ATTAINED A DISABLEMENT ***DUE TO*** EMPLOYER'S LACK OF APPROPRIATE ACTIONS, DOES PETITIONER HAVE A VENUE IN WHICH TO SEEK OVERSIGHT OF HER EMPLOYER'S ABRUPT,

PREMEDITATED DISRUPTION OF PETITIONER'S PERSONAL, FAMILIAL AND EMPLOYMENT LIFE?

9. SINCE PETITIONER'S SUPERVISOR HAD A VESTED INTEREST IN DEFAMATION OF PETITIONER, DUE TO ***"FACTS"*** **THAT (1)** ***UNAPPROVED RELEASES OF SECRET DOCUMENTS*** **WERE GIVEN TO THE FINNISH ATTACHE, The Defense Attaché of Finland,, (2) THE SUPERVISOR AND SENIOR DAO OFFICER MADE PETITIONER DELETE ALL WEEKLY CALENDAR FILES PRIOR TO THE INSPECTOR GENERAL INSPECTION IN MAY, 1996, (AFTER PETITIONER REPORTED OFFICE HOSTILITIES) AND (3) THAT COL MITCHELL AND SMSGT CIESLEWICZ MADE** ***FALLACIOUS STATEMENTS*** **THAT ALLEGED PETITIONER HAD A MENTAL ILLNESS PRIOR TO COL MITCHELL'S ABRUPT DEPARTURE THAT PREJUDICED DIA AND THE COURT TO DISREGARD PETITIOENR'S REPORTS OF SECURITY AWARENESS, CAN FINAL AGENCY DECISION BE ACCEPTED AS VALID?**

10. HOW IS IT THAT THE SUPERIOR COURT OF CALIFORNIA, THE NINTH CIRCUIT COURT OF APPEALS AND SENATOR DIANE FEINSTEIN CAN LEGITIMATELY DISPELL THEIR RESPONSIBILITIES AS PROTECTORS OF CITIZEN RIGHTS DUE TO EVIDENTLY MOTIVATED HOSTILITY AGAINST PETITIONER. PETITIONER HAS LIVED IN DEDICATION TO AND AWARDED BY MAJOR GENERAL PFISTER FOR SECURITY AWARENESS AND USED EXTREEM CAUTION IN KEEPING THIS CASE UNDER "LOCK-AND-KEY" FROM THE PRESS FOR 7 YEARS? HOW CAN IT BE THAT PETITIONER

CANNOT BE MADE WHOLE AGAIN? WHEN A GOVERNMENT CAUSES SUFFERING, HOSTILE WORK ENVIRONMENTS IN INTELLIGENCE AND "INTERNAL REMEDIES" FAIL WHILE FEDERAL AGENTS GET AWAY WITH CAUSING HARM TO THEIR OWN, BY ALLEGING UNREAL SEXUAL, FAMILIAL, ECONOMIC VULNERABILITIES, WHICH DIDN'T EXIST PRIOR TO EMPLOYER'S TREATMENT COMMENCING APRIL 1, 1997, HOW CAN IT BE THAT THE AUTHORITIES WILL NOT CALL THE NAMED AND YET UNDISCOVERED PARTIES TO THIS CRIME OF DEFAMATION TO JUDGMENT?

11. CAN THE JUSTICE DEPARTMENT DENY PETITIONER **EQUAL REPRESENTATION** DUE TO RESIGNATION FOR CAUSE FROM DEFENSE INTELLIGENCE AGENCY?

PARTIES TO THE PROCEEDING MED-EVAC-ED PETITIONER, INSTEAD OF PROCESSING A TERRORIST ALERT: They are all within the chain of command for Petitioner due to duty with DIA at a U.S. Embassy, as HUMINT unified ALL DoD Components, Secret Service, National Security Agency, Department of Justice, Central Intelligence Agency and any federal Human Intelligence entity since 1996 (this is public knowledge via News Papers), including the leadership of the Ambassador; Thus, the State Department and the Commander-in-Chief are in the chain of command with regard to HUMINT incidents and Terrorism reporting. **DEPARTMENT OF DEFENSE AND OTHER HUMINT PERSONNEL AT THE U.S. EMBASSY, BERNE, SWITZERLAND**– SMSgt (USAF) Joseph R. Cieslewicz (1993-1997), Operations Coordinator; COL (USA) Robert H. McBride, Defense and Army Attache (1997-); COL (USA) William H. Mitchell, Jr., former Defense and Army Attache (1993-1996); Col. (USAF) George W. Walton, Air Attache and Acting Defense Attache (1996-1997); Stephen R. Relitz, Bi-Lingual Research Technician; Mr. John Forte, Chief of SSO; SSgt (USMC) David Dukes, Marine Security Guard Commander. **HEADQUARTERS, DIA PERSONNEL DIRECTLY INVOLVED** – Ms. Sara Bell, Civilian Personnel Specialist; Ms. Terry Vandell, Personnel; Ms. Susan Fulton, Civilian Benefits and Personnel; Ms. Barbara Stein, Civilian Benefits (Fort Meade, MD); Ms. Lynn Roland, Civilian Personnel Assignment Contracts/Travel; Mrs. Susan Gerhardt, Defense Attaché Service (DAS) Personnel Officer; Ms. Katherine Curridan, Chief of Civilians in the DAS; COL (USA) Norton, European DAO Chief; Mr. Dimitri "Jim" Saretsky, Desk Officer for Switzerland (1993-1997); LTG Hughes, Director of DIA. **DEPARTMENT OF STATE** -- Ambassador Madeleine May Kunin; Deputy Chief of Mission Michael Polt; Mr. Peter Ford, Regional Security Officer; Mr. "Buck" Jardine, Embassy Admin Officer; **PRESIDENTIAL APPOINTEES:** Secretary of Defense William Cohen; Senator Alfonse D'Amato; **THE PRESIDENT OF THE UNITED STATES** -- William J. Clinton; +50 INCLUSIVE.

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1 U.S.C. 12111 et seq.
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A. Petitioner cannot afford to pay an attorney, so must work a low-wage job and spend her free time attempting to satisfy the court with what only professionals could know, in order to defend her right not to be attacked by professionals in Law and Intelligence of the U.S. government.

B. The court below– **denied trial by jury (Civil)**

C. The courts --**denied equal representation**

D. The Case Should be Remanded as Decisions **conflicted with the 11th circuit** regarding retaliatory treatment of a would-be witness involved official actions to Petitioner and on a federal-level and loss of employment without truthful justification and with an admittedly prejudiced court.

E. **The scope** of **Federal Intelligence Employees begs a national rule** that prohibits collection on and exploitation of U.S. Persons, unmarried or not, with Security Clearances. Petitioner suspects Respondent exploited her as a psychological and psychiatric test-case, using a "loop-hole", alleging sexual *needs*(?) *might* place one in a category of exploitation by possible enemies of the state, which allows experimental psychology (initiated by the employer to get the employee both sexually active for economic purposes and married to lessen any "Risk-Management" worries), which objective abridges privacy beyond need-to-know for national security purposes. Petitioner alleges invasion of privacy to make her sexually active, when she was chaste since her divorce and that **single motherhood became the impetus for**

intervention, due to low-income and could have been fixed by Respondent without "match-making" or forcing Petitioner in Sex-Therapy and pre-disposing psychiatrists' to diagnose Bi-Polar/Manic with sexual-sterilization.

F. **Violated an Executive Order12333**, which explicitly states that **only in the case of national security** would a citizen of the United States be tapped, surveilled, et cetera; yet, Petitioner's Supervisor launched an investigation the first month of assignment (1993) that lasted 3.5 years (1997)! Petitioner became cognizant only after she resigned-for-cause, due to DIA's insistence that Petitioner be drugged for Depression that Petitioner did not have. Petitioner became cognizant in Fall of 1998 via DIA files demanded by Petitioner's, then, counsel! Petitioner is now, herself, Counsel of Record.

G. **Petitioner never had competent counsel**, as she had no income, assumed international scope, and therefore sought with difficulty an International Law attorney willing to take her case on contingency. August 1997, an International-Fishing-Rights attorney accepted the challenge, but did not have expertise in Civil/Human Rights and was lead-on by DIA to file EEO and Disability claims, plus an intimidating track record of Respondent in that there are no successful cases with federal intelligence operations against their own personnel: All Petitioners have been denied.

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STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked pursuant to **28 U.S.C. § 1254(1).**

This case began in the U. S. District Court for the Southern District of California; Mr. Peter H. Flournoy, Esq., took Petitioner's case on contingency and had verbal and written contact with DIA on their terms for 1 year (EEO discrimination) (08/1997-08/1998), but Mr. Flournoy did not file for Ms. Kelso until May 25, 2001 (he is often out of the country: Japan, New Guinea, etc.).

STATUTORY PROVISIONS INVOLVED:

Uniform Code of Military Justice: Loss of Rank and Retirement benefits to those active-duty found culpable, which may incur incarceration in a military penitentiary.
7 U.S.C. 2000(e)(2): Respondent inflicted impairment.
1 U.S.C. 12111(5)(A): Respondent is an agency of the United States Government.
Title 42 United States Code Section 12111(5)(A), (8):
Respondent is an agency of the U.S.Government.
"Petitioner is a qualified individual with a 'deemed disability', as a single parent, who can, with reasonable accommodation, perform the essential functions of the job that she held in the employ of the Respondent." (Please, SEE Appendix **1a**, Original Complaint)
Federal Tort Claims Act: Respondent inflicted impairment and sought to elicit suicidal depression.
Americans with Disabilities Act of 1990 (ADA): Respondent inflicted impairment and sought suicidal depression, caused disillusionment.
Title 41 United States Code Section 12102(2).: In that Petitioner did not have a record of any illness, but was

inflicted with mental impairment by Respondent that substantially limited Petitioner from major life activities and as a result of Respondents actions was unable to cope with the stress of losing documented, successful and impact-awarded employment due to lies on the part of SMSgt Cieslewicz, Colonel McBride and Colonel Mitchell, which were perfunctorily exacerbated via Ms. Terry Vandell and Catherine Curridan of DIA; The above 5 DIA personnel prejudiced their own Military and Civilian Psychiatrists from objective observation, seeking validation of alleged maladies to remove Petitioner.

Title 42 United States Code Section 12112(a): Petitioner alleges that Respondent forced her to resign employment due to DIA's down-sizing and intent to remove the Secretary position, plus Petitioner had the ability to work 30 hours per week during the time her son needed hospital care, but had to get an au pair to facilitate working 40 hours while her son was ill; Petitioner was a DIA-Impact-Awarded employee, but her field office superiors didn't want to accommodate her need for mercy (even though her civilian peer, SMSgt Cieslewicz and COL Mitchell received months of gratuitous time off with pay, paid German Language vacations and a minimum of $10,000 per year more in regular wages).

By this action, Petitioner seeks the following relief, pursuant to Title 42 of the United States Code Section 12112(a), which incorporates the remedies set forth in Title VII of the Civil Rights Act of 1964, Title 42 United States Code Section 200e-5(g) and (k), for discriminatory treatment of Petitioner in violation of the ADA: monetary relief and back pay (derived **from the specific persons who were Respondent's agents at the time**, not DIA or the DoD budgets) to equal at a minimum Petitioner's back pay to May 31, 1997, compensatory and punitive

damages, attorney's fees and costs of suit, as the U.S. Department of Defense was not the proponent of the crimes, rather individuals using "color of office" to shield themselves from personal incrimination.

Title 42 United States Code Section 12111(8).

Petitioner could, with reasonable accommodation, perform the essential functions of the job that she held in the employ of the Respondent: Petitioner was expected to be in two places at one time and Respondent did not officially claim Petitioner's single motherhood status as a disability, but the pressure of covering the office for those absent and being expected to be at work full-time despite familial responsibility involving deathly illness of her young son required employer sympathy. Both her civilian peer, Mr. Relitz and the Defense and Army Attache, Colonel (USA) William H. Mitchell, Jr., enjoyed accommodations; However, Petitioner did not and was tasked with covering-for the skeleton-crew office.

Title 42 United States Code Section 12102(2).

Petitioner had no record of mental illness, but Respondent inflicted mental impairment by defaming and mishandling Petitioner in a manner that substantially limited major life activities due to the need to cope with the fallacious circumstances since April 1, 1997.

Title 42 U.S.C. § 1985(2). (Exhibit E, Petitioner's Reply to Appellees' Cross-Appeal**):** Respondents attempted to disable Petitioner to **pre-empt Petitioner from becoming a cogent witness** in federal court proceedings. Petitioner's employment and single-parent-employee-challenges pale in the shadow of what the 2 Ambassadors and their Deputy Chief of Mission, Michael Polt, plus American Media inflicted on the European Continent and Switzerland, specifically, during the Nazi Gold Agenda; This is why Petitioner initially requested a Congressional Investigation of Defense Intelligence Agency as well as

the Department of State, as Petitioner had concerns regarding J.P. Getty's visit to Ambassador Madelene May Kunin, in Nov. 1996, and Steven Spielberg's release of "Schindler's List" at the same time. Strategy appeared to be American-sponsored and Petitioner and her son were hurt by the reaction, blind-sighted along with the outraged Swiss population and Dr. Jagmetti, then Swiss Ambassador to the U.S. No wonder anti-Semitism grew.

The U.S. Supreme Court held (14 Dec 1998) in a unanimous decision that reverses the **Eleventh Circuit**: **Section 1985 authorizes suits over certain conspiracies to violate civil rights, such as tampering with a witness**. The Eleventh Circuit said that an at-will employee couldn't sue because he had no constitutionally protected interest in continued employment. But the Supreme Court said that nothing in the statute requires an injury to a constitutionally protected interest "The gist of the wrong at which § 1985(2) is directed is not the deprivation of property, **but intimidation or retaliation against witnesses in federal-court proceedings**. The terms 'injured in (this) person or property' define the harm that the victim may suffer as a result of the conspiracy to intimidate or retaliate...". "Thus, the fact that employment at will is not 'property'; for the purposes of the Due Process Clause... **does not mean that the loss of at-will employment may not 'injure' Petitioner in his person or property; for purposes of § 1985(2)**."

STATEMENT OF CASE:

A. PROCEEDINGS AND DISPOSITION IN THE COURTS BELOW: All Denied

DIA ***evoked*** Discrimination ***response*** (see sole remedies in Appendix 1a and court orders in the

Appendix). Petitioner filed for Wrongful Termination, Employment Discrimination & Jury Trial May 25, 2001.

June 7, 2002, Petitioner requested that she become the Counsel of Record in federal Appeals Court for the Ninth District. Petitioner filed a Brief, cross-brief and a request for rehearing en banc and publication of a Memorandum. The courts affirmed a time-barred condition. Petitioner was inhibited by Respondent's fraudulent conditions, not informed of her rights, which prejudiced the courts.

The incidents happened while Petitioner was in **successful federal employment with DIA at the U.S. Embassy in Switzerland**. Respondent refused a terrorist threat report from Petitioner and Respondent chose to Medically Evacuate Petitioner. The following 7 years were riddled with bombings at low-threat places. DIA could have reassigned Petitioner. DIA defamed Petitioner alleging mental illness, artificially disabling Petitioner.

B. STATEMENT OF THE FACTS

December 24, 1992, Petitioner became an employee of Defense Intelligence Agency and maintained good standing up to and including **May 31, 1997 (8 years of Top Secret).** **October 3, 1993**, Petitioner arrived at her new DIA assignment at the United States Defense Attaches' Office located at the United States Embassy in Berne, Switzerland. **October 5, 1993**, a Monday, SMSgt Cieslewicz was angered that Petitioner could not be at work the first workday in country and was further angered when he was informed it would take 2 weeks due to childcare requirements just to be able to work part-time. In late November Petitioner could work full-time and her 2.5 year-old-son went to the Swiss childcare center. Unbeknownst to Petitioner, SMSgt

Cieslewicz began a series of financial and security investigations with Headquarters DIA, as if Petitioner were a security risk for low-income, and suspected Petitioner of being disloyal to America for being the only one to have her child in Swiss childcare.

November 25, 1993, ZIEBELEMÄRIT (Tsee-bella-merit), or "Onion Day": the most popular festival in Switzerland celebrates and sells onion pies without pork ("pork" is mentioned due to the following years of Anti-Semitism).

November 25, 1994, ZIEBELEMÄRIT, sells onion pies with Quiche Loraine (made with cured pork).

July, 1994, Petitioner pays the equivalent of 1 year's childcare (over $3,000) for only one month of care, as the childcare center closed, but at least he became potty-trained.

August-Sept, 1994, Petitioner's son is forced back into diapers and insecurity, with increasing animosity and distrust of Petitioner and her employer as intrusive to their country.

Summer 1995, Swiss Ambassador Carlo S.F. Jagmetti publishes his book "*From shadows to shadows*" regarding the U.S. sponsored Nazi-Holocaust-Assets issue and Senator Alfonse D'Amato's haranguing infamously.

Fall 1995, Petitioner's Child care provider informs Petitioner that she needs to enlist Swiss psychologists for her son to keep child care services. Petitioner did so and learned the word "Schnappikopf" (colloquial Swiss German for Dick Head), and was informed that her son was paraded in the childcare center group naked as the only circumcised boy.

November 25, 1995, ZIEBELEMÄRIT, offers few onion pies, but <u>many with pork</u>.

January 18, 1996, Ambassador M. Larry Lawrence dies. Ambassador Kunin arrives August, 1996 and SES Leo Michel at the Geneva Center is already in place.

November, 1996, J.P. Getty visits Ambassador Kunin and media events. Steven Spielberg's "Schindler's List" is released.

November 25, 1996 ZIEBELEMÄRIT: **Petitioner could not find one onion pie without pork and went home to bake her own proper Swiss Onion Pie.**

December, 1997, Petitioner was forced to deplete retirement benefits in order to avoid personal bankruptcy, ability to raise her child due to loss of career income, employment references by use of punitive administrative maneuvering and ***drive Petitioner*** to spend her money on residential psychiatric care she never needed and against her will. **(NOTE: COL Mitchell took *personal offense (August* 1996)** to the fact that Petitioner deemed Psychology a **"BELIEF SYSTEM"** en-par with other theory-based cognitions of reality and he was offended at Petitioner's removal of her son from Swiss psychologists due to his own graduate degree in Psychology (even though the appointments limited Petitioner's work-availability and COL Mitchell's need for Psychological help was on the "Official Calendar"), which discussion took place during work hours.

September, 1996: Colonel (USAF) Walton informs Petitioner that he is not the "Acting" Defense Attaché, rather the Defense and Army and Air Force Attaché, regardless of what DIA Headquarters says and to produce memoranda with his signature as the "Defense Attaché".

November, 1996: The Celebrated J.P. Getty is a "personal" visitor to Ambassador Kunin, (She even made a point to diminish his visit, even though it was publicized and she announced it to the entire Embassy Staff), which Multi-Billionaire visit was simultaneous with Steven Spielberg's world-wide launch of "Schindler's List", also simultaneous with Senator Alfonse D'Amato's "tirade" in multiple, global news papers ("Petitioner's Impression" of Timeliness of impact and coordination is important and both artists and terrorists, politicians and pastors use "gossip/newest news" to affect those they deem vulnerable). Swiss Ambassador Jagmetti resigns for cause and Brigadier General Schlupp

dies of a heart attack on the Tennis court, when he was the Swiss Defense Attaché incumbent, in Washington, D.C.

November 25, 1996 ZIEBELEMÄRIT: **Petitioner could not find one onion pie without pork and went home to bake her own proper Swiss Onion Pie.**

March 25, 1997, Petitioner received Ms. Pat Johnson (an American English speaker), at Petitioner's private residence, where Ms. Johnson stated that she was a screenwriter and wanted to rent a quiet place away from distractions and was recommended by Ms. Doris Lanz, the U.S. Embassy housing coordinator. Ms. Johnson asked Petitioner, "What will you do with your son when you become hospitalized?" Petitioner was the epitome of health at the time and wondered why Ms. Johnson would ask such a strange question (this was 6 days prior to Petitioner's forced incarceration in a military psychiatric facility). She commented on Petitioner's Persian carpets, stated that she had been assigned in Iran, and spoke with a man in French, who wished Petitioner a Happy New Year, then left the apartment.

March 26, 1997, Petitioner called Ms. Pat Johnson at the Bellevue Hotel asking if Ms. Johnson was in any way allied with Mr. Christophe Lambert, whose "unofficial website" chat-room messages matched with Ms. Johnson's trip to Switzerland. Ms. Johnson denied any relationship.

March 28, 1997, Good Friday, Petitioner and Son went for a walk at the Marzili Bad park behind the Swiss Capitol Building, played a ball-game with some Swiss strangers, then walked home past the front of the Capitol building, where a "Solidarity" demonstration with most people in black leather were getting loud and there was a stage with a person yelling in a megaphone.

March 30, 1997, Easter Sunday, Petitioner took her son to Egelsee, a local lake near a friend's apartment. As they approached, a man whom Petitioner had seen near the Embassy ran away as she waved to him. Petitioner and son

also found some strange trails made of white baking flour that led into the street or dead-ended into walls. This was Easter Sunday, a day when people go for walks, and have fun, but it seemed twisted that day. After going home, Petitioner didn't feel safe anymore, so she took her son to her friend's apartment and then called Mr. John Forte, the Political Attaché, as he was my friend and the closest person with a security clearance. Later, Colonel McBride admonished Petitioner for contacting Mr. Forte instead of himself, as I was allegedly required to contact the Defense Attaché in times of security threats.

March 31, 1997, Petitioner sought the protection of the Embassy due to repeated, reported violations of her private residence, loitering of apparently Albanian men outside her residence, the fact that the Bosnian Embassy was directly across the street from Petitioners residence during heightened animosities, the scary coincidence of Ms. Johnson's allusion to being hospitalized, the inappropriate medical recommendations of several Swiss pediatricians with regard to Petitioner's son's deathly illness for 6 months, the hatred perceived from Petitioner's son's childcare authorities (Kinderkrippe Murifeld, Insel Spital, Tageseltern Verein, all of which are governed by the Canton of Berne and all of which mentioned Jewish politics on the part of the U.S. Embassy and Petitioner's son's circumcision from age 2.5-6. It was no wonder that I perceived surveillance in Berne, Switzerland as a U.S. Intelligence employee at our Embassy. What our government does affects us in our personal lives.

April 1, 1997, SMSgt Cieslewicz, Petitioner's immediate supervisor, composed a memorandum for COL McBride's (the U.S. Defense and Army Attaché) signature and Petitioner was required to sign this same memorandum. Petitioner's coerced signature effected Petitioner's Medical Evacuation to a U.S. military psychiatric facility in Germany (Landstuhl Regional Medical Center); COL McBride stated

that there would be no follow-up security investigation at Petitioner's residence and that Petitioner would have to return to her surveilled residence or sign the document. Petitioner had a 6-year-old son, who safety was a concern to Petitioner and chose the only *alleged* route to safety for her and her son. COL McBride stated that Petitioner's son would be able to stay together during the week-long, coerced psychological testing.

Later that day Petitioner's supervisor and the only other civilian peer at the Defense Attaches' Office (DAO) escorted Petitioner and her son in the DAO van to the military psychiatric facility 400 miles away. At 11p.m. Petitioner's supervisor informed Petitioner that her son would have to stay with him. SMSgt Cieslewicz informed Petitioner that she would either have to return to Berne and live in the same unsecured and uninvestigated situation if she refused to let him separate her son from her, thereby removing volition a second time from Petitioner. This was a shock to both Petitioner and her son, late at night, after a 400 mile drive and one day after a perceived terrorist surveillance incident.

The three military psychiatrists would not listen to any details regarding Petitioner's perceived surveillance, rather prescribed medication that is given to all newcomers at their facility, regardless of malady, and without objective testing or interview. Petitioner refused medication as she perceived the attempted drugging was part of being ignored. **April 2, 1997**, Petitioner's son was separated for a duration of 1 week and for the first time, was under the impression that his mother was forced to be separated from him as if she were ill, knowing that she was unwilling to stay. He returned without his mother to Switzerland, escorted by SMSgt Cieslewicz and Mr. Relitz, while Petitioner was forced to take perfunctory tests and take part in group sessions that did not pertain to the terrorist report Petitioner made.

April 3, 1997, unbeknownst to Petitioner, SMSgt and COL McBride had already processed Orders to send Petitioner back to the United States for further resident observation, as they disagreed with their own 3 military doctors. The doctors found no evidence of SMSgt Cieslewicz' and COL McBride's insistence that Petitioner had the need to undergo medication and therapy for Bipolar Manic disorder or Psychosis, as the document that SMSgt Cieslewicz and COL McBride composed, included "Ruling-Out" these diagnoses, rather than the diagnosis originating from their doctors. They found no evidence of DIA's assumptions. The diagnosis was Post Traumatic Stress Disorder, which DIA refused to accept.[1] **(SEE footnote for simultaneous unlawful search.)**

April 5, 1997, Petitioner and her son were reunited under escort of SMSgt Cieslewicz, Mr. Relitz and COL McBride, then escorted by SMSgt Cieslewicz via commercial Air Plane to San Diego and there he separated Petitioner and son by having Petitioner's Parents take custody of the 6-year-old boy, this was now April 6th, again, late at night in a strange place. Petitioner's son lost control of his bowels for two months, due to insecurity driven into him by the repeated late-night separations in strange places, worry about his mother and living with Petitioner's parents (strangers to him).

April 6th through 13th, 1997, Petitioner was not allowed to leave Mesa Vista Hospital, an expensive private facility, even though Petitioner is a U.S. Army Veteran and could have gone to the V.A. Hospital for free. Petitioner was then plagued with hefty resident hospital fees for months.

April 15th through May 31st, 1997, Petitioner contacted DIA Headquarters Personnel Management to find out when she could return to work; DIA personnel would not accept the

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[1] Exhibit E of Appellant's Reply to Appellees' Cross-Appeal Brief provided a copy of COL McBride's hand-written notes predilecting diagnosis and admission that he "Emptied (Petitioner's) files at home – no indication of security problems only personal info": 2 COUNTS.

doctors' diagnosis, and insisted Petitioner take medication for the illness they presumed without proper medical authority.
May 31st, 1997, Petitioner resigned for cause via fax.
August, 1997, Mr. Peter H. Flournoy, became counsel on Contingency. This relationship continued for 4.5 years.
October, 1997, Petitioner and Counsel were informed that DIA would only accept an EEO complaint based on race, religion, gender, age, disability and provided the form to apply in May 1998.
May, 1998, Petitioner filed a suit via Counsel; albeit, Counsel insisted that Petitioner plea under Americans with Disabilities Act causes, due to the encumbrance of DIA personnel, regardless of Petitioner's cognitive competency, Counsel insisted that the circumstances warranted acknowledgment of insurmountable odds due to "incredible" bureaucracy, in that federal employees demurred personal responsibility for their actions while in the employ of DIA, plus Petitioner was never acknowledged for the trauma of being surveilled in Switzerland and treated as if incompetent.

Background Before the Disputed Incident
October 3, 1993, Petitioner was assigned to the Defense Attachés' Office, Berne, Switzerland for a two-year tour. Unbeknownst to Petitioner, SMSgt Cieslewicz, Petitioner's new immediate Supervisor, submitted Petitioner to DIA Security investigation for low-income (Petitioner discover this fact in April 1998, when DIA divulged all "releasable" documents regarding Petitioner.
November, 1993, Defendant SMSgt Cieslewicz conducted a survey of Per-Diem rates for Berne, Switzerland, but excluded childcare costs for those on official duty. Petitioner had to pay full-non-Swiss-resident fees for childcare during a 1.5 month period, while living in a hotel situation where food costs were higher until securing a home in December 1993.

December, 1993, Petitioner and son moved into their residence by Embassy/DIA/NSA contract with Price Waterhouse in Berne, Switzerland.

October, 1995, Petitioner's supervisor was promoted to E-8 in the Air Force. At the "Wet-Down" ceremony, COL Mitchell grabbed the champagne bottle from Petitioner in front of many Embassy colleagues, and embarrassed Petitioner as if incapable of opening the bottle. Petitioner goes upstairs to where SMSgt is and he consoles her with his wife present, hugging and kissing her while Petitioner cries. There is no sexual harassment here, only humiliation from COL Mitchell and SMSgt was too drunk and happy at his own promotion party to see tears. His wife, right next to Petitioner fully understood, as did Petitioner. Sexual harassment in this case pertains to the unwritten law of sexual activity questions and the problem of low-income.

June, 1996, Petitioner was allowed to take a long-overdue leave, due to a "skeleton-crew" at the DAO for 8 months, plus a delay in issuing a new contract with DIA Personnel managers, namely Lynn Roland, but she was not the only responsible party for producing a written agreement.

July, 1996, Petitioner and her son performed their over-due-leave in San Diego, California, due to the DIA contract that supplies a round-trip-flight to any destination as a benefit to those contracting for a consecutive assignment overseas. During Petitioner's visit, Petitioner's old school friend informed her that he had AIDS.

August 3, 1996, Petitioner returned to the DAO in Switzerland, spent a week helping her 6-year-old son overcome jet-lag. SMSgt Cieslewicz and Mr. Relitz communicated their displeasure at Petitioner being back in Berne and still taking leave, as their own ability to be "back-on-the-job" once "back-in-country" did not include a single parent family's concerns. Petitioner had requested approval of the Leave Dates, without regard to being back in Berne.

August 9, 1996, Petitioner returned to full-time work and informed SMSgt that her childhood friend had AIDS.
August 22, 1996, Petitioner was informed by her San Diego friend's family that her friend died on August 28th, 1996.
August-Early September, 1996, Petitioner and the entire office was occupied with the incumbent Defense Attaché's abrupt retirement. The Air Attaché, Colonel George Walton, became the "Acting" Defense Attaché, until January 31, 1997, when Colonel Robert H. McBride arrived in-country.
Late September, 1996, (Two weeks later) Petitioner's son became deathly ill with pneumonia symptoms of fluid in his lungs, projectile vomiting, body temperature at 102 degrees.
September, 1996, Petitioner had become acutely aware of her responsibilities as a parent and a full-time employee of DIA, especially due to the passing of her 35-year-old best friend and the incarceration of her son's father. Petitioner was the sole care-giver of her son after school. She harnessed the energy into revamping her personal health condition with free-weights, stretching exercises, vitamins, legally-acquired herbs, a whole-foods diet and personal diligence. In 3 months, Embassy personnel made comments that alluded to her "being in love with (somebody)". Petitioner had no intimate partner and then that appears to be the issue with which DIA took issue. In 6 months Petitioner had only reduced her weight 25 pounds, but lost 6 dress sizes due to the effects of weight lifting adding muscle and burning fat. Petitioner was at the height of fitness.
February, 1997, SMSgt questioned Petitioner regarding amorous relationships and intent to bear any more children.

REASONS FOR GRANTING THE WRIT:

1. Lack of advisement within the statutory period that Petitioner had the right to legal counsel.[2]

2. Abuse of "color of office" by SMSgt Cieslewicz and COL McBride prejudiced DIA Headquarters, military and civilian doctors and courts to perpetuate a fraud that removed Petitioner's Constitutional Rights, unsubstantiated.

3. Supervisors SMSgt Cieslewicz and COL Mitchell committed "Espionage" at the onset of Petitioner's assignment, plus demanded that Petitioner erase all calendar records prior to the IG inspection in May 1996 to "lessen the burden of inspection".

4. Petitioner committed no crime, adhered to rules of conduct and was treated poorly by her military/civilian chain-of-command to prevent news of this treatment becoming known.

5. Petitioner's lack of intimate relationships, Chastity, and low-income were the only reasons SMSgt Cieslewicz could justify an investigation of Petitioner for 3.5 years.

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[2] DIA didn't inform the courts that they **prevented and tricked Petitioner** to untimely file in lower courts and didn't give recognition to either Petitioner's or former counsel's communications prior to May 1998, constituting a **Fraud on the court and an Obstruction of Justice**, as Petitioner had no legal counsel prior to late August 1997 and DIA claims that Petitioner's first response commenced in May of 1998, (a Falsehood, as *Petitioner maintained telephonic and written contact* with DIA Personnel Headquarters from April-August 1997, when Petitioner perceived that **ONLY *documented communication via an attorney* would be acknowledged**).

6. Petitioner's NON-ATTENDANCE at unofficial social events, such as the "Thank-God-It's-Friday" alcoholic events sponsored by the U.S. Marine Security Guard every Friday, at the U.S. Embassy, Berne, Switzerland were cited as suspect: It seemed as if an unwritten law of "Put-Out, or Get-Out" became a reality for Petitioner. When Petitioner had social events with Swiss nationals, SMSgt Cieslewicz used no words, but body language that indicated distrust in Petitioner.

CONCLUSION:

This case presents several questions of national importance that involve fair and just treatment of civilian employees whose superiors are active duty military in the U.S. Army, Air Force and Marine Corps as well as DoD civilians in Human Intelligence and in conjunction with the State Department. This Court has the opportunity to define boundaries as to what constitutes abuse of security clearance requirements and what is invasion of privacy and harassment. This court should take this opportunity to rectify the ability of intelligence organizations to violate personnel through their closed-system by creating an independent Intelligence Over-sight specifically for the purpose of preventing and admonishing illegal collection on U.S. citizens, as private information was used to fabricate a false caricature.

Respectfully submitted,

ALICIA KELSO, Counsel of Record, Pro hac vice
9325 Lavell St., La Mesa, California 91941
(619) 463-1801 & Cellular: (760) 470-3841

APPENDIX A: INDIVIDUAL COMPLAINT FOR MONETARY RELIEF FOR WRONGFUL TERMINATION AND EMPLOYMENT DISCRIMINATION, DATED: MAY 25, 2001

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CV-01-00928-W (CGA)

ALICIA KELSO, Plaintiff

v.

UNITED STATES DEFENSE INTELLIGENCE AGENCY

Defendant

Plaintiff ALICIA KELSO respectfully alleges as follows:

GENERAL ALLEGATIONS

1. This action arises under 7 U.S.C. 2000(e)(2), 1 U.S.C. 12111(5), and the Federal Tort Claims Act. This action is brought pursuant to the Americans with Disabilities Act of 1990 (ADA), Title 42 United States Code Section 12101 et seq., and Title VII of the United States Civil Rights Act of 1964, as amended, Title 42 United States Code Section 2000e et seq.

2. Plaintiff is and at all times mentioned herein was a United States Citizen.

3. Plaintiff currently resides in the Southern District of California.

4. Plaintiff is, and was during the times mentioned herein, a single mother with one son by the name of Ian Robert Kelso.

5. Plaintiff is informed and believes, and thereon alleges, that the defendants named herein as Does 1 through 50, inclusive, are and at all times herein mentioned, were either individuals, corporations, or other legal entities

residing in, or transacting business in the United States. Plaintiff is presently unaware of the true names and capacities of the defendants named herein as Does 1 through 50, inclusive, and Plaintiffs will seek leave of court to amend this Complaint to allege the true names and capacities of these defendants when the same has been ascertained.

6. Plaintiff is informed and believes, and thereon alleges, that at all times relevant herein, the defendants named herein as Does 1 through 50, inclusive, were each proximately responsible either through their actions, errors or omissions, for Plaintiff's injuries and damages herein, and each such fictitious defendant acted as the agent of each other defendants in this action.

FACTUAL BACKGROUND

7. Plaintiff began working for the Defendant Defense Intelligence Agency, United States Department of (Defense) in December of 1992, in the Agency's Office in New York, New York as a civilian employee.

8. In the following year, in October 1993, Plaintiff became qualified for and accepted an assignment as Secretary (at the level of a GS 7) in the Office of the Military Attaché, at the United States Embassy, in Bern, Switzerland. Thereafter on or about November 1995 through July 1996, Plaintiff achieved the position of Security Assistance Manager (without an increase in grade). This was Plaintiff's first overseas (civilian) assignment. Plaintiff aspired to become an Intelligence Technician. One of the reasons Plaintiff accepted this position was to acquire overseas experience which was required to advance to the position of Intelligence Technician (GS 8). Plaintiff was informed that she could be qualified to apply for the position of Intelligence Technician overseas.

9. In her position in Bern at the U.S. Military Attaché's Office, her immediate supervisor was Senior Master Sergeant (SMSgt)(USAF) Joseph R. Cieslewicz. SMSgt Cieslewicz

was at all times an agent for the Defense Intelligence Agency, action within the scope of his employment.

10. Upon Plaintiff's arrival interview in Bern, on or about October 1993, Cieslewicz inquired improperly about details concerning Plaintiff's personal finances. When Plaintiff refused to disclose such details, Cieslewicz informed Plaintiff that she was being uncooperative. Subsequently, Plaintiff contacted Defense Intelligence Agency Headquarters in Washington, D.C. and was informed that no civilian employee was required to give personal financial information to their supervisor.

11. Cieslewicz required office personnel, who performed the Embassy mail run and pickup by traveling to Heidelberg, Germany, to provide their overnight lodging address and telephone number. Plaintiff's address was at the home of one Ali Shahmirzadi. When informed of this, Cieslewicz made a demeaning statement with reference to a terrorist by the name of "Ali".

12. Plaintiff did not participate in Embassy social events to which she could not take her son, Ian. In particular, Plaintiff did not attend "TGIF" parties which were held on a regular basis by the Marine Corps Guard Detachment stationed at the U.S. Embassy. Plaintiff did not attend because she chose to be with her son Ian at home on Friday evenings.

13. Plaintiff's social life was primarily involved with members of the Swiss national population. Plaintiff often took her son to the children's playground with a Swiss friend who was also a single mother. Plaintiff was also acquainted with and helped a retired Swiss Army Colonel and his wife. One Thanksgiving Plaintiff had dinner and coffee with the former Secretary to the Republic of Korea's Defense Attaché's secretary, who was also Swiss.

14. On or about July 1996, Plaintiff took a long delayed (due in part to the crisis in Bosnia and personnel shortages)

home leave to San Diego, California. During this trip Plaintiff visited a close friend, Christopher McColl Wallace, who was battling the AIDS virus, and who eventually died on August 28, 1996. Plaintiff returned to Bern on or about July 30, 1996.

15. From October 1996 through December 1996 Plaintiff's son was continuously ill and in need of constant attention by Plaintiff. Beginning with a persistent cough, her son's condition worsened over time to choking and projectile vomiting of large volumes of clear mucus. Despite the administrations of two different Swiss medical doctors Ian's health did not improve. In December of 1996 Plaintiff was told that because of his continued illness, and Plaintiff's decision to discontinue counseling sessions for her child with a Swiss child psychiatrist, Ian could no longer attend the child care facility where he had been going. Plaintiff and Plaintiff's child's attendance at these sessions had been strongly recommended by the operator of the child care center. Plaintiff used up all her vacation leave time and accumulated sick time in order to be with her son.

16. In September of 1996 Plaintiff's son Ian had been enrolled in kindergarten as Swiss Montessori method school, however, also about this time the school informed Plaintiff that he could no longer attend due to the same reasons advanced by the child care center. Desperate to seek care for her son, Plaintiff hired an *au pair*.

17. Plaintiff attended a "town hall meeting" in the Fall of 1996, hosted by Ambassador Kunin. At that meeting, which included U.S.S citizens and foreign national staff at the Embassy, Plaintiff made a number of comments which were intended to elicit appreciation for the cultural diversity present. This led to two days of subsequent ridicule of

Plaintiff by one Gunny Sergeant Dukes accompanied by his handing out derogatory flyers at the Embassy[1].

18. Beginning sometime in February or March of 1997, Plaintiff became convinced that she was under surveillance by people unknown, coming and going from work and while at her apartment in her most private moments. Plaintiff reported this suspected surveillance to her immediate supervisor SMSgt Cieslewicz, as she was under a duty to so report. Plaintiff believes that no appropriate investigation of this suspected surveillance as ever conducted.

19. Plaintiff continued to work in her position in Bern until March 1997, when she sought the protection of the Embassy for the safety of herself and her son from the ongoing surveillance. Instead of receiving help, she was summarily and hurriedly medically evacuated to Landstuhl Army Regional Medical Center, Germany.

20. Upon Plaintiff's arrival in Landstuhl, Plaintiff's son was forcibly removed from her, despite repeated earlier assurances Ian by Col. McBride that if Plaintiff agreed to go to Landstuhl her son could remain with her during her "evaluation". Plaintiff was then placed in a week long residential evaluation. Subsequent to the evaluation, residential therapy was suggested and Plaintiff and her son were removed to San Diego, California, under escort by SMSgt Cieslewicz.

21. In San Diego, California, Plaintiff as examined by and under the care of Dr. Harry A. Greer, M.D. who at that time was associated with Mesa Vista Hospital. On April 21, 1997, at the request of the Defendant Defense Intelligence Agency, Dr. Greer wrote an evaluation of Plaintiff which recommended that she be placed in a less stressful position.

22. Despite this recommendation and positive evaluation, of which Plaintiff was not privy to at the time, the personnel

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[1] SSgt Dukes publicly ridiculed Petitioner's town hall contribution.

office of the Defense Intelligence Agency pressured Plaintiff and actively encouraged plaintiff to resign her position. Defendant and its agents continually refused to focus the discussion on or investigate the surveillance of which Plaintiff had complained. Plaintiff was given, without justification, the ultimatum of "take the medicine prescribed by Dr. Greer, and only then may you have your job back".

23. On or about May 31, 1997, Plaintiff wrote a facsimile to the Defense Intelligence Agency attempting to resign from government service.

24. On or about August 14, 1998 Plaintiff filed a complaint with the Defense Intelligence Agency based on an Equal Employment Opportunity claim. This claim was rejected on or about October 8, 1998. It was not until that time that it was revealed that an official in the Defense Intelligence Agency had encouraged Plaintiff to resign.

FIRST CLAIM

EMPLOYMENT DISCRIMINATION UNDER THE ADA)

25. Plaintiff refers to and incorporates by reference paragraphs 1 through 24 of the General Allegations above as though fully set forth herein.

26. Plaintiff alleges employment discrimination based on Plaintiff's disability.

27. Plaintiff alleges that Defendant forced Plaintiff to resign Plaintiff's employment with Defendant because of Plaintiff's disability, in violation of Title 42 United States Code Section 12112(a). By this action, Plaintiff seeks the following relief, pursuant to Title 42 of the United States Code Section 12112(a), which incorporates the remedies set forth in Title VII of the Civil Rights Act of 1964, Title 42 United States Code Section 2000e-5(g) and (k), for the discriminatory treatment of Plaintiff in violation of the ADA: monetary relief, back pay, compensatory and punitive damages, attorney's fees and costs of suit.

28. Plaintiff is disabled as defined by the ADA, Title 42 United States Code Section 12102(2), in that she has a record of a mental impairment that substantially limits one or more of her major life activities in that she is unable to cope with stressful situations and is severely depressed.

29. At all times relevant herein, Defendant has been an employer as defined by the ADA, Title 42 United States Code Section 12111(5)(A), in that Defendant is an agency of the United States Government.

30. Jurisdiction of the subject matter of the action is established in this court by the ADA, Title 42 United States Code Section 12117(a), which incorporates the jurisdiction provisions in Title VII of the Civil Rights Act of 1964, Title 42 United States Code Section 2000e-5(f)(3).

31. On or about May of 1997, Defendant intentionally discriminated against Plaintiff because of Plaintiff's disability, in that Defendant did not place Plaintiff in a less stressful position as was recommended by Plaintiff's (SIC: Defendant's) doctor (SIC: doctors), but rather encouraged Plaintiff to resign her employment.

32. Plaintiff is a qualified individual with a disability within the meaning of Title 42 United States Code Section 12111(8) because she can, with reasonable accommodation, perform the essential functions of the job that she held in the employ of the Defendant.

33. The discriminatory action of Defendant as set forth in paragraphs 31 and 32, above, has caused and will continue to cause Plaintiff to suffer losses of earnings, from May 1997 until the filing of this lawsuit and beyond.

34. As a further proximate result of Defendant's unlawful and intentional discriminatory actions against Plaintiff, as alleged above, Plaintiff has been harmed in that Plaintiff has suffered emotional pain, humiliation, mental anguish, loss of enjoyment of life, and emotional distress. As a result of such

discrimination and consequent harm, Plaintiff has suffered such damages in an amount according to proof.

35. The above-recited actions of Defendant were done with reckless indifference to Plaintiff's rights under the ADA in that Defendant disregarded the recommendation of Plaintiff's (SIC: Defendant's) doctor (SIC: doctors) and refused to accommodate her disability, even after is was made apparent by the Plaintiff's (SIC: Defendant's) doctor (SIC: doctors).

36. On or about August 14, 1998, Plaintiff filed a discrimination charge against Defendants with the Equal Employment Opportunity Commission through the Defense Intelligence Agency. The charge was rejected on or about October 8, 1998. This action is subject to the doctrine of equitable tolling, in the Plaintiff was not advised of her rights by the Defendant's, and many circumstances beyond Plaintiff's control prevented Plaintiff from timely filing a charge.[2]

SECOND CLAIM
(EMPLOYMENT DISCRIMINATION UNDER TITLE VII OF THE CRA)

37. Plaintiff refers to and incorporates by reference paragraphs 1 through 24 of the General Allegations above as though fully set forth herein.

38. Plaintiff refers to and incorporates by reference paragraphs 25 through 36 of the first cause of action.

39. Plaintiff is a Christian female.

40. Defendant is an employer subject to suit under Title VII in that Defendant is a United States Government Agency.

41. Jurisdiction of the subject matter of this action is established in this court under Title VII of the United States

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[2] Defendant did not provide the forms to file with EEO until May, 1998 (a year after Petitioner needed them and 6 months after Counsel for the Petitioner requested them).

Civil Rights Act of 1964, as amended, Title 42 United States Code Section 2000e-5(f)(3).

42. During Plaintiff's employment by Defendants, Plaintiff was subjected to conversations concerning religion, and hostility towards her choice of religion. Defendant did nothing to stop these incidents from occurring, despite Plaintiff's requests.

43. Defendant's discriminatory actions caused Plaintiff great distress and mental anguish.

44. Defendant's discriminatory actions against Plaintiff, which constitutes an unlawful employment practice in violation of Title VII of the United States Civil Rights Act of 1964, as amended, Title 42 United States Code Section 2000e-2(a), has caused and will continue to cause Plaintiff loss of employment and earnings, from the date of May 1997 until the filing of this lawsuit and beyond.

45. The above-recited actions of Defendant were done with reckless indifference to Plaintiff's rights under Title VII, in that Defendant did not take steps to minimize conversations about religion in the workplace.

46. On or about August 14, 1998, Plaintiff filed a discrimination charge against Defendants with the Equal Employment Opportunity Commission through the Defense Intelligence Agency. The charge was rejected on or about October 8, 1998. This action is subject to the doctrine of equitable tolling, in that Plaintiff was not advised of her rights by the Defendant's, and many circumstances beyond Plaintiff's control prevented Plaintiff from timely filing a charge on this basis.

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as follows:

AS TO THE FIRST CAUSE OF ACTION

1. For judgment against all Defendants in an amount to be determined at trial according to proof.
2. For back pay, with prejudgment interest, from June 1997 to the date of judgment herein.
3. For compensatory damages according to proof.
4. For costs of suit, including reasonable attorney's fees and expert fees, pursuant to Title 42 United States Code Section 12117(a), which incorporates the remedies set fort in Title VII or the Civil Rights Act of 1964, Title 42 United States Code Section 2000e-5(k); and
5. For such other relief as the court deems proper.

AS TO THE SECOND CAUSE OF ACTION

1. For judgment against all Defendants in an amount to be determined at trial according to proof.
2. For back pay, with prejudgment interest, from June 1997 to the date of judgment herein.
3. For compensatory damages according to proof.
4. For costs of suit, including reasonable attorney's fees and expert fees, pursuant to Title 42 United States Code Section 2000e-5(k) and other applicable laws; and
5. For such other and further relief as the court deems proper

DATED: May 25, 2001, PETER H. FLOURNOY, Attorney for Plaintiff

APPENDIX B: ORDER GRANTING DEFENDANT'S MOTION TO DISMISS, (SAN DIEGO) DATED FEBRUARY 13th, 2002

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CV-01-00928-W (CGA)

ALICIA KELSO, Plaintiff

v.

UNITED STATES DEFENSE INTELLIGENCE AGENCY

Defendant

Defendant United States Defense Intelligence Agency ("Defendant") moves to dismiss this action pursuant to Rule 12(b)(6) or in the alternative Rule 56(c) of the Federal Rules of Civil Procedure. Plaintiff Alicia Kelso ("Plaintiff") opposes. All parties are represented by counsel. The Court decides the matter on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d.1).

I. BACKGROUND

In December 1992 Plaintiff began working for Defendant's New York City offices. In October 1993 Plaintiff relocated to the United States Embassy in Bern, Switzerland, In early 1997 Plaintiff became convinced she was under surveillance by unknown third parties. In March 1997 Plaintiff sought the Embassy's surveillance protection for both her son and herself.

Thereafter, Plaintiff was medically evacuated to the Landstuhl Germany Regional Medical Center for a one week evaluation. Based on her medical providers' recommendation, Plaintiff and her son were medically evacuated to San Diego's Mesa Vista Hospital in April 1997. On May 31, 1997 Plaintiff resigned.

In April 1998 Plaintiff commenced administrative proceedings on a potential discrimination claim. On October 8, 1998 Defendant formally rejected the claim based on Plaintiff's failure to timely initiate counseling within 45 days of the alleged discrimination. Defendant further informed Plaintiff that she had 90 days to appeal to a federal district court. Counsel for Plaintiff received the rejection notice no later than October 21, 1998.

On May 25, 2001 Plaintiff commenced this action alleging disability discrimination in violation of Title VII and the Rehabilitation Act. Defendant now moves to dismiss all claims as time-barred.

II. LEGAL STANDARD

Rule 12(b)(6) allows a court to dismiss a complaint upon a finding that the plaintiff has failed to state a claim upon which relief may be granted. FED. R. CRV.P. 12(b)(6). A 12(b)(6) motion tests a complaint's legal sufficiency. See. e.g. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). Thus, dismissal is proper only where the plaintiff's complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. See id, "[I]f as a matter of law 'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations,' a claim must be dismissed... whether it is based on an outlandish legal theory or a close but ultimately unavailing one." Neitzke v. Williams, 490 U.S. 319, 326-27 (1989) (citations omitted). A court should not dismiss a complaint "unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Parks School of Business, Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). Finally, a court must accept the complaint's allegations as true and construe the complaint in the light most favorable to the plaintiff. See Cahill v. Liberty Mutual Ins. Co., 80 F.3d 336, 338 (9th Cir. 1996).

III. DISCUSSION

There are two narrow issues before this Court. First, the Court must determine whether Plaintiff's Title VII claim and Rehabilitation Act claim are time barred. Assuming the claims are untimely, the Court must next determine whether equitable tolling should preserve Plaintiff's claims. The Court will separately address each issue in turn.

A. PLAINTIFF'S CLAIMS ARE TIME-BARRED BY STATUTE.

Plaintiff brings this action seeking to recover for Defendant's alleged discriminatory practices during Plaintiff's employment. Defendant contends both claims are time-barred as a matter of law. The Court agrees.

Federal employees seeking to recover for alleged discriminatory practices must commence their action in district court within 90 days of receiving a final agency decision. 42 U.S.C. § 2000E-16(c). In this case, Plaintiff's counsel received Defendant's final agency decision denying Plaintiff's claims on October 21, 1998. (*Cipriani Decl.*, Ex. 1 at 3.) Accordingly, the deadline to commence a district court action was no later than January 21, 1999. Plaintiff filed this action on May 25, 2001 – more than *two years* after the statutory filing deadline had passed. The Court therefore concludes that Plaintiff's Title VII claim is time-barred absent equitable tolling.

Rehabilitation Act[3] remedies maintain the same procedural requirements as civil right remedies. 29 U.S.C. § 794a(a)(1). As such, Plaintiff was further required to seek recovery on her proposed Rehabilitation Act claim within 90 days of the final agency decision denying relief. For the same

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[3] Although Plaintiff devotes considerable argument ot the Americans With Disabilities Act's (ADA) applicability to the present case, Plaintiff's statutory reliance is misplaced. The United States is specifically exempt from the definition of "employer" under the ADA. 42 U.S.C. § 12111 (5)(B)(i). Federal employee grievances involving disabilities are properly covered by the Rehabilitation Act, 29 U.S.C. § 791 et seq.

reasons noted above, Plaintiff's May 2001 action, and the Rehabilitation Act claim contained therein, is time-barred.

B. Equitable TOLLING IS INAPPROPRIATE IN THIS CASE.

Despite both claims being time-barred, Plaintiff nonetheless argues that this Court should equitably toll the statute of limitations. The Court is unpersuaded. As the Supreme Court noted:[4]

> Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. (Citations omitted).

Irwin v. Veterans Administration, 498 U.S. 89, 96 (1990). The Ninth Circuit has held that equitable tolling "has been consistently applied to excuse a claimant's failure to comply with the time limitations where she had neither actual nor constructive notice of the filing period." Leorna v. U.S. Dep't of State, 105 F.3d 548, 551 (9th Cir. 1997) (citing Stallcop v. Kaiser Found. Hosps., 820 F.2d 1044, 1050 (9th Cir. 1987)); Cooper v. Bell, 628 F.2d 1208, 1212 (9th Cir. 1980)). However, the Ninth Circuit in Leorna also stated that "once a claimant retains counsel, tolling ceases because she has gained the 'means of knowledge' of her rights and can be charged with constructive knowledge of the law's

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[4]Complainant has been induced and tricked by Respondent's misconduct and denied legal advice during the statutory period. Petitioner had no history of mental illness and alleges any mental impairment was acquired **due to the actions of Respondent** during the very time Respondent was supposed to but did not inform Petitioner of deadlines and rights.

requirements.
Id, (citing Stallcop, 820 F.2d at 1050.

In this case, Plaintiffr has been represented by counsel since at least May 1998. (*Cipriani Decl.*, Ex. 1 at 16.) It is further undisputed that the October 1998 Final Agency Decision was addressed directly to Plaintiff's counsel. (*Cipriani Decl.*, Ex. 1 at 1.) The letter states that "[b]ecause this constitutes the Final Agency Decision in Ms. Kelso's complaint, she may appeal this dismissal in accordance with the instructions in Enclosure 2." (*Cipriani Decl.*, Ex.1 at 20.) As such, Plaintiff not only had constructive, but actual knowledge of the statue of limitations via her attorney.

Nothing before this Court compels it to equitably toll claims that have been openly and notoriously known by all parties for over two years. Plaintiff failed to abide by the express terms of the relevant statutes. Accordingly, the Court concludes that Plaintiff's claims are time-barred as a matter of law.

IV. Conclusion and Order

In light of the foregoing, the Court GRANTS Defendant's motion to dismiss. (Doc. No. -1.) The Court DISMISSES all claims with prejudice and without leave to amend. The Coiurt further denies all other pending motions as moot. (Doc. No. 5-2.) The Clerk of Court shall close the district court case file.

IT IS SO ORDERED.

DATE: February 12, 2002 **Original Signed**
Hon. THOMAS J. WHELAN
United States District Court
Southern District of California

CC: ALL PARTIES

APPENDIX C: JUDGMENT IN A CIVIL CASE, (SAN DIEGO), DATED FEBRUARY 13th, 2002

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Case Number: 3:01-cv-00928

ALICIA KELSO, Plaintiff
v.
U. S. DEFENSE, Defendant

__ JURY VERDICT. . This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X decision by court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT the motion to dismiss plaintiff complaint is granted and denying the motion for summary judgment as moot; the court deismisses all claims with prejudice and without leave

2/13/02
Date

W. Samuel Hamrick, Jr.
Clerk

Original Signed

Entered on 2/13/02
pre – Whelan
ref - Aaron

Denial 3: APPENDIX D – ORDER DENYING PLAINTIFF'S EX PARTE APPLICATION SEEKING RECONSIDERATION, (SAN DIEGO) DATED APRIL 9th, 2002

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Case Number: 3:01-cv-00928

ALICIA KELSO, Plaintiff
v.
U. S. DEFENSE, Defendant

By order dated February 13, 2002, this Court granted Defendant's motion to dismiss with prejudice and without leave to amend. Plaintiff Alicia Kelso now seeks leave of court to pursue a motion for reconsideration. Defendant United States Defense Intelligence Agency ("Defendant") opposes. For the resons stated below, the Court denies Plaintiff's ex parte application.

I. BACKGROUND

In December 1992 Plaintiff began working for Defendant's new York City offices. In October 1993 Plaintiff relocated to the United States Embassy in Bern, Switzerland. In early 1997 Plaintiff sought the Embassy's surveillance protection for both her son and herself.

Thereafter, Plaintiff was medically evacuated to the Landstuhl Germany Regional Medical Center for a one week evaluation. Based on her medical providers' recommendation, Plaintiff and her son were medically evacuated to San Diego's Mesa Vista Hospital in April 1997. On May 31, 1997 Plaintiff resigned.

In April 1998 Plaintiff commenced administrative proceedings on a potential discrimination claim. On October 8, 1998 Defendant formally rejected the claim based on Plaintiff's failure to timely initiate counseling within 45 days of the alleged discrimination. Defendant further informed Plaintiff that she had 90 days to appeal to a federal district court. Counsel for Plaintiff received the rejection notice no later than October 21, 1998.

On May 25, 2001 Plaintiff commenced this action alleging disability discrimination in violation of Title VII and the Rehabilitation Act. By order dated February 13, 2002 this Court granted Defendan'ts motion to dismiss after finding Plaintiff's claims time-barred. Plaintiff now seeks reconsideration of that decision pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure.

II. LEGAL STANDARD

A district court should generally leave a previous decision undisturbed absent a showing that it either represented clear error or would work a manifest injustice.[5] Christianson v. Colt Indus. Operating Corp.,

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[5] Petitioner's factual employment was with Defense Intelligence Agency, a subordinate entity of the U.S. Department of Defense, therefore, a public entity, not a private business. Lieutenant General Hughes took special interest in Bern, Switzerland, assigning 3 Mormons to the post while he remained Director of DIA.
Petitioner was an employee of a governmental intelligence activity, which was under scrutiny by the **commonly believed fiction that intelligence employees are "all spys" in Embassies.** A great deal of prejudice was inflicted on her and her son by both Swiss nationals, the local childcare center and Petitioner's own family members during the Nazi Gold issue and Senator D'Amato's haranging of Swiss Ambassador Jagmetti, which qualifies as extraordinary.
Extraordinary circumstances were explicitly defined in the Appeals Brief and request for rehearing, in that Petitioner's son acquired a deathly illness, and two other office staff of the DAO acquired deathly illnesses, as well as one significant family member was diagnosed with Cancer.

486 U.S. 800, 817 (1988). Relief under Rule 60(b)(6) is reserved for extraordinary circumstances and is used "sparingly as an equitable remedy to prevent manifest injustice." Corex Corp. v. United States, 638 F.2d 119, 121 (9th Cir. 1981); FED. R. CIV. P. 60(b)(6).

III. Discussion

Plaintiff's reconsideration application is essentially a belated effort to recast her unsuccessful and time-barred employment discrimination claims as arising under California contract law. The effort fails.

In order to qualify for relief under Rule 60(b)(6), a party must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with the prosecution or defense of the action in a proper fashion. United States v. Alpine Land & Reservoir Co., 984 F.2d 1047, 1049 (9th Cir. 1993). Information which a party could have put forth prior to the underlying judgment but chose not to raise does not warrant relief under Rule 60(b)(6)[6]. See Schanen v. United States Dep't of Justice, 762 F.2d 805, 807-08 (9th Cir. 1985), *reaff'd as modified*, 798 F.2d 348 (9th Cir.1986) (new arguments which a party could have raised prior to entry of the underlying judgment do not warrant relief under Rule 60(b)(6). Likewise, failure to state a potential defense or

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Previous to our 3-year Cadre's illnesses, there were serious accidents that resulted in paraplegia (coincidences?).

[6] Respondents omit inducement to react to Disability Law demands put forth by Respondent, also fraud on the Court regarding Petitioner's lack of advisement for legal rights. Respondents buried Petitioner in psychiatric counseling with attempts to force strong medication on Petitioner before she left the first 3 weeks of loss of freedom to make decisions for herself and access to her personal files, clothing, money, telephone, postal communication, blocking any way to communicate outside Respondent's created disablement of Petitioner.

claim does not constitute gross negligence or exceptional circumstances justifying the extraordinary relief available pursuant to Rule 60(b), because the rule does not afford relief for deliberate tactical decisions of a party. See Nemaizer v. Baker, 793 F.2d 58, 59-60 (2nd Cir. 1986). As noted by the Court's order dated February 13, 2002 – federal employees seeking to recover for alleged discriminatory practices must commence an action in district court within 90 days of receiving a final agency decision. 42 U.S.C. § 2000e-16(c). In this case, Plaintiff's counsel received Defendant's final agency decision denying Plaintiff's claims on October 21, 1998. (*Cipriani Decl.*, Ex. 1 at 3.) Accordingly, the deadline to commence a district court action was no later than January 21, 1999. Plaintiff filed this action on May 25, 2001 – more than *two years* after the statutory filing deadline had passed.[7] The Court therefore maintains its prior conclusion that Plaintiff's Title VII claim is time-barred. The same holds true with respect to Plaintiff's claims arising under the Rehabilitation Act. 29 U.S.C. § 794a(a)(1).

Moreover, the only "extraordinary" circumstance alleged by Plaintiff is that she chose to raise employment discrimination rather than contract claims in her original complaint. Plaintiff has alleged no circumstances beyond her control that prevented her from proceeding with a contract claim at the outset of this action. Accordingly,

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[7] Petitioner's attorney contacted DIA August 1997, was promised proper paperwork by Ms. Joyce Harrison in October 1997, did not receive the paperwork until April 1998, and the case was finally officially recognized in May, 1998. Respondent attempts to delude the court, misrepresenting the facts repetitiously and their very documents on the docket are evidence of fraud on the Court..

Plaintiff's failure to do so is not the kind of extraordinary circumstance that justifies Rule 60(b)(6) relief.[8]

Even assuming relief was warranted under Rule 60(b), such motion must nonetheless be denied if the party lacks a meritorious claim. Lepkowski v. United States Dept. of Treasury, 804 F.2d. 1310, 1314 (D.C. Cir. 1986). That is, when the proposed claim is not viable, vacating the judgment is merely "an empty exercise or futile gesture." Cobos v. Adelphi University, 179 F.R.D. 381, 389 (E.D. NY 1998), citing Owens v. United States, 1997 WL 177863, at *2(E.D.N.Y. Apr. 3, 1997). That is precisely the case presented by the facts of this case.

Congress has enacted an intricate scheme of specific remedial mechanisms for federal employees aggrieved by adverse personnel actions. See. e.g, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 200e et seq.; the Age Discrimination in Employment Act of 1967, as amended in 1974, 29 U.S.C. § 633, et seq. ("ADEA"); the Rehabilitation Act of 1973, 29 U.S.C. § 794a et seq.; and the Civil Service Reform Act ("CSRA"), codified in

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[8] Again, Respondent omits the lack of legal advice to Petitioner in a timely manner. Respondent's counsel is not knowledgeable regarding American politics in Switzerland 1993-1997 and that ignorance is not punishable, rather should be recognized as a weakness of ability to answer to the issues at hand. Political actions at the U.S. federal level enflamed the Swiss population (Op-Eds, diplomatic letters, televised news shows, et cetera predilected viewers to adopt viewpoints that they had no objective standpoint to pass judgment, only parrot what was broadcasted in American-sponsored international media), strategically setting that country up for prejudice against American Government employees in their country, while at the same time encircling Switzerland both politically and economically. I was not a "player", yet I was treated as "one of the government Americans by certain persons in the private-Swiss locale, due to Media Hype. Both Petitioner and 6-year-old son suffered daily harm as the only government employee and family member accessible to the Swiss population on a daily basis for 9 hours per day, 5 days per week.

various sections of Title 5 of the United States Code. These statutory schemes constitute the exclusive avenues by which a federal employee may challenge the adverse personnel actions they are designed to address.[9] Bush v. Lucas, 462 U.S. 367, 368, 388-390 (1983). When a claim "arises out of" the federal "employment relationship," the plaintiff is barred from pursuing relief outside these statutory schemes.[10] Id. At 388-390 (1983). See also Brown v. GSA, 425 U.S. 820,825 (1976); Saul v. United States, 928 F.2d 829, 835-840 (9th Cir. 1991).

Following the Supreme Court's guidance in Bush and Brown, courts have consistently rejected federal employment claims based on statutory, common law or constitutional predicates other than the statutes enumerated above. The federal statutory scheme is designed to pre-empt the field of federal employment and to preclude the application of state law governing private employers to federal employment disputes.[11] Saul v. United States, 928 F.2d 829, 842 (9th Cir. 1991). Accordingly, the Ninth Circuit has emphasized that where the factual predicate for a separate non-Title VII claim is the same as the basis of the Title VII claim, the holding in Brown controls, and Title VII is the exclusive remedy. See Nolan v. Cleland, 686 F.2d 806, 815 (9th Cir. 1982). See also Clemente v. United States, 766 F.2d

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[9] Petitioner suffered Human Rights violations, guised as personnel actions.

[10] Despite exhaustion of internal "mechanisms within the employment relationship"? If those "mechanisms" are dysfunctional, is Petitioner without recourse, especially if Petitioner "resigned for cause" and that quality of "for-cause-resignation" is obliterated from the record?

[11] Respondent attempts to exploit counsel's lack of federal employee jurisprudence regarding overseas assignments, as former counsel mistakenly used California employment law. PETITIONER WAS A FEDERAL EMPLOYEE WORKING IN SWITZERLAND, and WAS A RESIDENT OF FLORIDA during the time reviewed by this court.

1358, 1364 n.7 (9th Cir. 1985) (separate claims founded in actions proscribed by Title VII may not be maintained because Title VII provides the exclusive remedy). Even where the federal employment statutes provide no remedy, any state claim is preempted. Saul, 928 F.2d at 843.

Clearly, federal civil service employment is governed by federal law and not by California contract remedies. See, Brown v. United States, 226 Ct. Cl. 669, 671 (1981)(noting that federal employment does not create rights enforceable under a contract theory). Moreover, as the Ninth Circuit noted in White v. General Services Administration, 652F.2d 913 (9th Cir. 1981), "allowing additional individual remedies would interfere with that carefully devised scheme by permitting circumvention of administrative remedies." Id. At 916. That concern is especially applicable here.

Permitting Plaintiff to assert a breach of contract claim based on the same facts as her employment discrimination claim would eviscerate the governing administrative and statutory prerequisites.[12]

Indeed, the only reason Plaintiff is pursuing a contract claim is that "[s]uch an action does not fall within the confines of the statute of limitations for the Rehabilitation Act." (see Ex Parte Appl. At 2:15-16.) (**Note:** The forgoing is a ***conclusion*** of Respondent's counsel as it is an assumption, not a **Fact** – ***emphasis highlighted by Alicia Kelso, Petitioner***)

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[12] Petitioner contracted with Respondent for a 90-day-Probationary period, then became a "Permanent Employee" while still in the New York Offices of DIA. Petitioner was in "Permanent Employee" status under the "Exempted" category when initially assigned and accepted to the Defense Attaches' Office at the U.S. Embassy in Berne, Switzerland in October, 1993, where the events in question took place on April 1, 1997.

The Court rejects this argument. There is simply no reasonable basis upon which Plaintiff can advance her time-barred claims regardless of the label attached. Plaintiff cannot secure any relief in this case.

IV. CONCLUSION AND ORDER

In light of the foregoing, the Court **DENIES** Plaintiff's ex parte application for reconsideration. This case shall remain closed.

IT IS SO ORDERED.

DATE: April 9, 2002

ORIGINAL SIGNED
Hon. THOMAS J. WHELAN
United States District Court
Southern District of California

CC: ALL PARTIES

APPENDIX E –JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DATED MARCH 20, 2003

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 02-56018 CT/AG#:
CV-01-00928-TJW(CGA)

ALICIA KELSO
Plaintiff – Appellant

v.

UNITED STATES DEFENSE INTELLIGENCE AGENCY
Defendant – Appellee

APPEAL FROM the United States District Court for the Southern District of California (San Diego).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California (San Diego) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered March 20, 2003

APPENDIX F – NOTICE OF APPEAL (CIVIL) (SAN DIEGO) DATED JUNE 7, 2002

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Case Number: 3:01-cv-00928 W (CGA)

ALICIA KELSO, (Appellant) Plaintiff
v.
U. S. DEFENSE, (Appellee) Defendant

Notice is hereby given that ALICIA KELSO, Plaintiff, above named hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Final Judgment, Order April 9, 2002, entered in this proceeding on the 13th day of February, 2002.

Date civil complaint filed: May 25, 2001.

Date: June 6, 2002 ORIGINAL SIGNED

Filed and accepted June 7, 2002

APPENDIX F – MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DATED MARCH 20, 2002

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NO. 02-56018
CT/AG#: CV-01-00928-TJW(CGA)

ALICIA KELSO
Plaintiff – Appellant

v.

UNITED STATES DEFENSE INTELLIGENCE AGENCY
Defendant – Appellee

NOT FOR PUBLICATION

APPENDIX G – ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DATED AUGUST 20, 2003

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 02-56018 and CT/AG#: CV-01-00928-TJW(CGA)
Southern California

ALICIA KELSO
Plaintiff – Appellant

v.

UNITED STATES DEFENSE INTELLIGENCE AGENCY
Defendant – Appellee

Before: CANBY, O'SCANNLAIN, and T.G. NELSON, Circuit Judges

The panel votes to deny the petition for panel rehearing. Judges O'Scannlain and T.G. Nelson vote to deny the petition for rehearing en banc, and Judge Canby so recommends.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

The petitions for rehearing and for rehearing en banc are denied.

The request to publish the memorandum disposition filed on March 20, 2003 is denied.

No further filings shall be accepted in this closed appeal.

A true copy, Attest
CATHY CATTERSON
Clerk of Court
By: Ruben Talavera
Deputy Clerk

This certification does constitute the mandate of the court

APPENDIX H – JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DATED SEPTEMBER 3, 2003

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NO. 02-56018
CT/AG#: CV-01-00928-TJW(CGA)

ALICIA KELSO
Plaintiff – Appellant

v.

UNITED STATES DEFENSE INTELLIGENCE AGENCY
Defendant – Appellee

APPEAL FROM the United States District Court for the Southern District of California (San Diego).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California (San Diego) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

STATUTES:

1. **UCMJ (active military):** unlawful search of a private residence without probable cause or due process, invasion of privacy, imposition of other personnel's religious beliefs during work hours, inappropriate use of questioning regarding "close and intimate contact(s)", as the ***lack*** of such became the issue, rather than the existence.
2. **Title 7 U.S.C. 2000(e)(2), 1 U.S.C. 12111-5(g) and (k):** Discriminatory treatment of Petitioner in violation of **Americans with Disabilities Act of 1990 (ADA), as it is alleged that *DIA inflicted Disabling of Petitioner*** that begs the Court to consider ADA claims of exploitation of a vulnerable person: Petitioner was a single mother of a young child and employer abruptly destroyed their family by the false Medevac and coercion to resign.
3. **Federal Tort Claims Act:** PETITIONER LOST Continued Employment having done no wrong, Ability to be reassigned, Retirement Benefits, Credibility with other employers and family, Self-Determination (as both military and civilian psychiatrists and psychologists were used to validate assumptions of Respondent that defamed Petitioner, removed Constitutional right to make decisions), Custody of her only child, Ability to educate her sole child in Swiss schools. Petitioner has and will continue to lose earnings and joy in life from May 1997 to present, due to the burden of bringing this case to the Court's attention. Petitioner has been harmed in suffering to this time emotional pain, humiliation, mental anguish, loss of motherhood, and financial distress, damage to her Central Nervous System, Gum Disease due to stress and fear. As a result of such discrimination, reckless indifference to Human Rights, disregard to even Respondents' own psychiatric agents' recommendations and consequent harm, Petitioner has suffered such damages in an

amount according to proof. The past 7 years of Petitioner's motherhood and her son's childhood cannot be replaced.

4. **Title VII** of the United States Civil Rights Act of 1964, as amended: Respondent is a U.S. Government Agency

5. **Doctrine of Equitable Tolling:** Respondent didn't advise Petitioner of her rights. Respondent alleges Petitioner hung a poster of DIA Headquarters EEO officers and that made her fully informed, when Petitioner's **Embassy EEO officer** was a State Department Executive out of reach on Easter Monday in 1997. Petitioner did not have her household goods for 6 months (3months after the filing deadline for EEO claims). **DIA deliberately threw Petitioner into confusion** when she reported a danger in Switzerland, then Respondent falsely Medevaced and coerced Petitioner to pay expensive psychiatric bills and resign. Petitioner believes she was **set up, framed**. Many circumstances beyond her control prevented Petitioner from timely filing a charge. **This invokes Miranda rights of access to competent counsel in a time of need.**

6. **Title 42 United States Code Section 2000e et seq.:** Strategic Impairment of an employee, then exploiting her.

7. **Americans with Disabilities Act of 1990 (ADA), with of deliberate DISABLING OF PETITIONER:** Petitioner has no history of disability, whether physical or cognitive, ever, until Respondent alleged the lie and defamed Petitioner.